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The influence of Grotius in the Far East



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HUGO GROTIUS

The Influence of Grotius in the Far East

BY

DR. S. TAKAHASHI

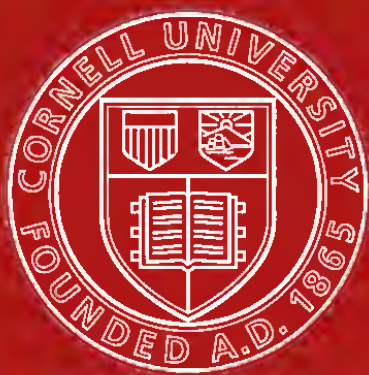
With Introductory Remarks

BY

HARRINGTON PUTNAM

BROOKLYN N Y

APRIL 10 1908



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GROTIUS STATUE AT DELFT

THE Law Department of the Brooklyn Institute, having decided to celebrate the 325th Anniversary of the birth of Hugo Grotius, met in the Hall of the Long Island Historical Society in Brooklyn, on the evening of April the tenth, 1908.

As Dr. Sakuye Takahashi, the eminent authority on Japanese Prize law, was then in New York, he was induced to attend and speak of the influence of Grotius in the Far East.

After an opening address by the President of the Law Department, Hon. James D. Bell, the speakers were as follows:

ADDRESS OF MR. HARRINGTON PUTNAM

Hugo Grotius, whose anniversary we celebrate, was born at Delft on the tenth of April, 1583. The period can be realized by the fact that it was the next year, 1584, that an assassin struck down William the Silent. From amid this revolutionary struggle, it seems strange to read of his devotion to literary studies. Entering the Leyden University at the age of twelve, his career henceforth is known to scholars. Sent to accompany an embassy to France in 1599, he had already prepared two works for the press; one, an edition of Capella, a Latin author from northern Africa, whose style and subject were extremely difficult, which he had edited with distinguished success. Before, however, this book appeared, it is pleasant to note that the first actual publication bearing his name was a translation of mathematical tables prepared by Stevin for pilots and navigators (afterwards officially adopted for use in the Holland navy), and which he dedicated to the sister Republic of Venice. This was a great display of learning by a youth only sixteen years of age, at once in the fields of mathematics and in classical literature. His early interest in shipping and navigation, as we shall see, was the keynote of his entire career.

You are familiar with the fact that in 1607 there appeared from his pen, although published without authority, his *Mare Liberum*, a treatise on the freedom of navigation, which is commonly off-set against the work of the English scholar, John Selden, entitled *Mare Clausum*. Grotius' work, however, was written against a claim of exclusive jurisdiction in Eastern waters. Selden's book, twenty years later, was intended to demonstrate the exclusive right of the crown to the English

seas. The first edition was in 1635. If we were to pause to compare these two contestants, it would be sufficient to say that though the learning of Selden's writings was enormous, his tone of servility to the exclusive claims of the English crown forms an unfavorable contrast to the independence shown in his other writings. The arguments of Selden, however, treated those of Grotius with courtesy, although in the Table-talk he occasionally refers to Grotius with something of the supercilious air customary in England, as where he says "Grotius, that Hollander!"

It is difficult at this day to imagine the intense feelings of political and denominational rivalries in Holland at about the time that the Pilgrims sailed from Delfthaven for Plymouth Rock. Prince Maurice of Nassau had demonstrated a military genius superior to any of his time, but had accompanied it with those military traits of command and centralized power which would brook no opposition, so that a party had arisen determined to preserve their ancient liberties, which they feared the House of Orange were plotting to overthrow. Among these patriots, led by John of Barneveldt, was Grotius. He not only believed in liberty, but he questioned the arbitrary action in religious affairs that brought him into still further conflict with the reigning powers. Motley has told us of the life and tragic death of his leader, John of Barneveldt, whose execution is one of the sad events of Dutch history. Grotius, tried twice, was eventually imprisoned for life and his property confiscated. In 1619 he was removed to the castle of Louvestein, a fortress at Gorcum, at the junction of the Wall and the Meuse. His wife accompanied him. While here he was active, being permitted to receive books sent by his brother and other friends. He there wrote the *Introduction to the Laws of Holland*, a treatise so exact that in the last century it was translated into English, not as a matter of legal antiquity, but for practical use in the British government of the Dutch Dependencies in South Africa, as well as for the Dutch possessions taken over by the British in Guiana and South America.

The story of his escape is familiar. His wife persuaded him to have his books sent back, and asked of his friends a larger box for the purpose. In this box, in which holes had been cut to admit air, he was placed; it was carried down and put on board a small vessel to be sent away; just as he was escaping thus concealed, the soldiers, considering the box too

heavy, desired to search it, whereupon the wife of Grotius (or her maid) made a positive denial; so that he escaped. The Holland artists and etchers have made many illustrations of Grotius being carried out in this box or koffer, and the old casuists loved to discuss and refine over the question whether the wife of Grotius was morally justified in her misstatement that procured her husband's liberty.

Grotius thus regained his freedom in 1621. In a small village near Paris, after what appeared to be the work of less than two years, he completed in 1625 his great work, *De Jure Belli ac Pacis*,—the commentary on the rights of war and peace, which immediately gave him wide celebrity.

Andrew D. White, in his address on the Fourth of July, 1899, to the American delegates at The Hague, when he placed the wreath on the tomb of Grotius in the new church at Delft, used these words:

“Of all works not claiming divine inspiration, that book, written by a man proscribed and hated both for his politics and his religion, has proved the greatest blessing to humanity. More than any other, it has prevented unmerited suffering, misery and sorrow; more than any other, it has ennobled the military profession; more than any other, it has promoted the blessings of peace and diminished the horrors of war.”

A further tribute is by Horace Bushnell—who speaks of this exile, bending over his desk in a foreign land, writing a book which shall govern the movement of armies, the dictates of kings and shall ensure civilization and peace in all coming time.

Grotius was approached by the Swedish crown to enter into the service of Sweden as an ambassador to France. On his way to Sweden he landed at Amsterdam, in 1631, but such was the bitterness of party feeling that he was again banished into exile and forbidden to remain within the territory of the States General. Making his way to Sweden, he was made Minister to France, and maintained for ten years the interests of Sweden during the struggle of the Thirty Years' War and the complicated political situation that made Paris the storm centre. During this time the other works that came from his pen, covering the general field of literature, of religion and of law, are too numerous to be here mentioned. One was on the origin of the aborigines of America, which appeared in 1642. Grotius suggested a Scandinavian source for the natives of the

northern portion of America, and was one of the earliest to maintain that the Northmen, coming by way of Greenland, had settled the North Atlantic coast. For Mexico and Peru, on account of local religion and customs, he suggested a Chinese origin, supporting his views with many curious analogies, but ending his treatise with the modest statement that he was still open to be convinced by other investigators.

In his later years, his mind reverted much to religious topics, and to the unhappy conditions which he saw becoming more inflamed by partisan bitterness. He not only strove to find the points of agreement between Protestants, but he sought as far as possible to seek the great points of agreement with the Church of Rome and to bring together all disciples of Christ by removing points of difference.

Feeling age coming upon him, he tendered his resignation to the Queen of Sweden, went to Stockholm and refused further employment there, and started to return to Germany. In poor health when he sailed from Sweden and still further exhausted by a voyage across the Baltic, he arrived at Lübeck a sick man, and when he reached Rostock he died, in 1645, at the age of sixty-three.

To describe the extraordinary range of his genius would be beyond the field of this address. American lawyers and publicists, in the great controversies of a century ago, were in the habit of quoting Grotius against the demands of England, and in that country Grotius was still spoken of disparagingly through the early part of the last century.

The stock criticism of Grotius was that he was a scholar, a pedant, and not a practical man. It was maintained in England that his views were theoretical, and the idealisms of the sentimentalists, against which they put forth the sayings of black-letter lawyers, like Selden, as the work of practical men administering affairs, whose theories had to undergo the test of argument in Court—and this was the position in which Grotius was held by the English speaking legal world for over two centuries.

In 1864, however, there was found at The Hague Grotius' commentary "*de Jure Prædæ*," which was discovered to have had a curious origin. Some Dutch ships attacked by Portuguese privateers, turned the tables, the Portuguese being taken and their ships brought in to Sumatra as prize. The Dutch owners, considering that they were not at war with Portugal, scrupled

at taking prizes in these circumstances, and even whether the capture of private property at sea was morally justifiable. Apparently this point was submitted to Grotius as counsel for the East India Company, to which the captor, Captain Hemskerck, belonged,—and this resulting treatise was an opinion or brief which Grotius prepared in 1604 to maintain this right of capture. After serving its immediate purpose, it remained by Grotius as a nucleus for his further reading; so that when the controversy over the dominion of the sea arose three years later, it was a chapter from this growing work that was published under the title of *Mare Liberum*. Apparently the material was always at his hand, growing and developing, so that we now know that the *War and Peace*, instead of being the miraculous result of a genius working only for a short time, with access to the libraries of Paris, was the concentrated fruit of close application for twenty-one years from the time he was employed by the East India Company in 1604 till its final emergence in 1625.

Grotius, then, becomes something more to us than a name of authorship; a brilliant poet, an editor of classics. He was actually a practicing advocate on the law of the sea, and is fairly entitled to be enrolled in that great brotherhood of the bar of the admiralty!

This explains two divergent criticisms of the *War and Peace*. It is spoken of as over-juridical,—too much the work of the lawyer. It is also criticised, especially in England, as being too theoretical, and paying too little attention to the institutional form of law already in existence in national affairs. It might seem that these two criticisms were mutually destroying, but there is force in each. When Grotius is treating of armies, of political affairs, of the duties of peace and war on land, he is often going outside of any laws or treaties, but is laying down duties that ought to be, if not already, recognized. But when Grotius speaks of the laws of the sea, the obligations of ships, the duties of owners, he writes with technical precision, and the various passages of his work on that subject have a meaning and practical application to us, three hundred years later.

During the Spanish War very few prize causes were argued before the Supreme Court at Washington in which a text of Grotius was not used either by counsel or the court.

Special instances might be too technical for this audience, but on the great questions of the right of the master to bind his owners, the relations of shipowners between each other, the duty to repair wrongs done, the obligation toward cargoes, the clear views of Grotius are law to-day, as they were when he was first advising the East India Company.

I alluded to the tribute at the tomb of Grotius by the American delegates at the First Hague Conference. A later tribute is by the Carnegie Institute at Washington, which last winter voted to publish the *War and Peace* in its original text, without note or comment, to be under the editorship of Dr. Scott of the Department of State, with the best portrait of the author.

It is a philosophic reflection that the period of Grotius' troublous life witnessed the most bitter warfare of modern times. Yet it is from that period, apparently so dark and hopeless for mankind, that this work for the civilization of states derived its origin.

Beyond the bitterness of religious strife he had a vision of a re-united Christendom — a hope that the coming centuries may yet realize. Then, indeed, there may well be at his tomb another and even more significant wreath !

It falls to others to speak of Grotius as a poet, as a classical scholar, as a politician, as a scientist, as one of those great names, like Erasmus, Scaliger and the other scholars of Holland, whose thoughts belong to the world. But it is a peculiar pleasure that Grotius is claimed by us as a maritime lawyer, not merely an authority, but, like many of us who are here to-night, one who gave the studies of his life to the rights and duties of the ships upon the sea. Rufus Choate remarked in his eulogy of Mr. Webster that it seemed after his death "as if the sailors' path in the great solitude or the wilderness of the sea henceforward was more lonely and less safe than before."

Of Grotius the contrary was true. Henceforward the law of the sea as declared by Grotius, gave a new protection to the mariner and to the increasing interests with which he was to be intrusted.

ADDRESS OF DR. TAKAHASHI

INFLUENCE OF HUGO GROTIUS IN THE EAST

As a student of International Law in the Far East, I feel very much honored to have an occasion of joining with your institute in celebrating the 325th anniversary of our Father of International Law, Hugo Grotius, and to read a paper on his influence in the East.

Influence of Hugo Grotius in his lifetime

Hugo Grotius was simply an individual scholar. He was neither king, emperor, president or chief magistrate of any law-making power, nor did he ever aspire to or claim to some day become the sovereign of the world. But international law, of which he laid the foundation stone, became the universal law of all civilized nations. As we know, the Roman Emperors and Popes who once claimed the Universal Sovereignty did not succeed in establishing such a universal law. But Grotius, the exiled Dutch jurist, did accomplish this great work even in his lifetime. Since the beginning of history until the present time there were, and still are, many learned men, in this line, but no one quite so successful as was Grotius. It seems that he was born with the destiny of becoming the maker of law for all the nations of the world—a law which the Roman Emperors and Popes could not promulgate. It is very noteworthy that the time of his birth was just the time that the world wanted a man like himself. To prove this a brief history of the thirty years' war will be referred to. It is impossible to imagine a war more fraught with awful records of crime and misery.

The sick and wounded, left behind by their comrades, experienced in their own persons the tortures they had inflicted in the day of their strength and power. Famine and pestilence followed in the wake of the armies. There was no pity, no reverence, no devotion. Whole districts went out of cultivation, and were allowed to grow up into forest and wilderness. Cannibalism was frequently preceded by murder. Human beings, turned by misery into wild beasts, rivalled the beasts in ferocity and foulness. In the remote country districts religion died, and learning perished from the universities. As early as 1626 there were only two students left at Heidelberg.

When in 1636 Lord Arundel traveled up the Rhine as English Ambassador to the Emperor, he found at one place the poor people "dead, with grass in their mouths." At another, where the plague was raging, they were dying at the rate of over thirty a day. At a third place he sent to the starving population food, at the sight of which they strove so violently, that some of them fell into the Rhine! Even when a town surrendered on conditions, ransom had to be paid for everything within it; and the siege itself was almost as destructive to human life as a storm would have been. Augsberg lost six-sevenths of its inhabitants in a siege which lasted seven months; and other towns were still more unfortunate, in that they were besieged several times in the course of the war. Three-fourths of the German population had perished. Three-fourths of the houses were destroyed, together with five-sixths of the oxen and nearly all of the sheep.¹ Such was the misery, and all the Europeans, from kings to individuals, were horrified at the ravages of war. At this time Grotius published *De Jure Belli ac Pacis*. He said that Justice requires us to spare as much as possible those who have done us no wrong. Old men, women, children, priests, husbandmen and merchants are specially mentioned as not being liable to destruction.²

We do not wonder that these words had been listened to by the people in that time. Gustavus Adolphus was an enthusiastic admirer of Hugo Grotius, and it is said that the king always carried with him this work of Grotius. Soon after the war his book was taught as public law at Heidelberg and Wittenberg. Puffendorf and other writers adapted the main outline of his system and spread a knowledge of it throughout western Europe.

The cause of the success of Grotius is the application of the law of nature to the intercourse of nations. At the end of the sixteenth and the beginning of the seventeenth centuries, belief in a law of nature was universal among educated men. The revival of learning greatly extended the influence of the theory, and its connection with Roman law made it one of the favorite conceptions of jurists. Grotius did not fail to take advantage of it and utilized the theory of natural law as well

¹ Lawrence, *Essays on some disputed questions in modern International Law*, pp. 180-183.

² *De Jure Belli ac Pacis*, Bk. III, Ch. XI.

as the *Jus Gentium*. In this regard Grotius actually made two mistakes. It was a speculative error to suppose that the so-called law of nature was a positive code existing among men; and it was an error of fact to suppose that the *Jus Gentium* was the law between nations; yet, had it not been for these errors, it is difficult to see how he could have found materials for the construction of his system.

Such was his influence over Europe in his lifetime.

The influence of Grotius after his death in the western part of the world is, as is to be expected, very great. But it may be safely said that Grotius, and even his successors, did not anticipate his influence reaching so far as the eastern end of the world.

Why Japan came so easily under the influence of Grotius.

In Japan there existed from ancient times several legal ideas which are similar to those of International Law.¹

For instance, we can recite several cases concerning the law of precedence, immunity of heralds, the necessity of the declaration of war, etc.

But these are not in reality the rules of International Law, just as *Jus Feudal*, *Jus Gentium*, and *Jus Belli* are not the rules of International Law. Still the fact that these rules existed in Japan from ancient times may prove that Japan was quite ready to come under the influence of Grotius.

Why Japan consented to come under the influence of Grotius, or in other words, why Japan was allowed to become a party to International Law.

One of the three fundamental rules laid down by Grotius is this:

All states are formally equal.

It seems from the interpretation of this rule that every country, if she is independent, may claim the right of equality and may become a party to International Law on the same footing with other members of the world community. But the international lawyers have been very particular about the application of International Law. Some said that only the Christian countries could be entitled to become a party to

¹ Sakuye Takahashi. *Le droit international dans l'histoire du Japon*, 1901.

International Law. Some said that only those countries which have the European civilization have such a right. On the 7th of September, 1900, the Institute of International Law met at Neuchatel, in Switzerland, where I had occasion to be present as one of the audience. Mr. Kebedgy insisted that the rules which they were considering could not be applied to other nations than Christian. Mr. Brusa maintained that International Law must be applied to all Christian nations and those countries as adopt the legal principles of Christian nations. Mr. Westlake said that, as there are many non-Christian countries which are very civilized, it was not proper to restrict the application of International Law to the Christian nations, but that it should be applied to the countries of European civilization. Then Mr. Rolin-Jacquemyns said that as there are many civilized countries which have not European civilization it is better to apply International Law to all the civilized nations. On that day the opinion of Mr. Kebedgy was overruled, having only three votes against the opposition of all the other members. Mr. Westlake also received two votes against all others, and Mr. Brusa's also met with the same fate, while Mr. Rolin-Jacquemyns withdrew his proposal. At last no definite conclusion had been made at the time. But it must be remembered that during the discussion several members, who insisted upon putting some restriction on application, referred to Japan as an exceptional country which cannot be excluded.

In this way Japan was recognized by the powers as a party to International Law. It must be noticed that the recognition of a right is simply the affirmation of the fact and not the giving of the right. So it will be better to say that as Japan voluntarily and earnestly came under the influence of Hugo Grotius she succeeded in having the universal affirmation of the fact and became a party to International Law.

Brief history concerning the influence of Grotius in Japan.

It is not long since Japan became the admirer of Grotius. About forty years ago not even a single Japanese subject perhaps had any knowledge of the modern International Law. When the war broke out between Prussia and France the ministers of both states at Tokio approached Japan to issue a

proclamation of neutrality. But, to speak the truth, no Japanese at that time was well acquainted with the meaning of the word "neutrality." Fortunately there was a Chinese translation of Mr. Wheaton's work by Mr. William Martin. The Japanese authorities studied this work in great haste and proclaimed neutrality.¹

But, we are sorry to say, they mistook the legal meaning of the 24-hour rules; and consequently there took place the curious case which is known as "The Linois Case." This case is very like that of the *Tuscarora* and the *Nashville* in 1861-1862. The fact is that a French man-of-war, the *Linois*, availed herself of the opportunity to abuse an existing defect in the Japanese neutrality regulation and used the port of Yokohama as the base of operations.

"To suffer is a reward" is an old motto. In fact, during about forty years, Japan has had many hard experiences in international affairs, and for that hardship, I dare say, Japan ought to be very grateful, as that hardship pushed her to study International Law and to become a good pupil to Grotius.

On the 15th of November, 1887, Japan joined the Red Cross Convention, and on March 19th of the next year she joined the Declaration of Paris. At the beginning of the China and Japanese war in 1894-5, the Emperor of Japan proclaimed in his declaration of war that:

"We command each and all of our competent authorities to carry on hostilities by sea and land with all means at their disposal, *consistently with the Law of Nations*,"

and sent Dr. Ariga to the military commander-in-chief, and myself to the Japanese fleet, as legal advisers. In the late war the Emperor again proclaimed in the declaration of war that:

"We also command all of our competent authorities to make every effort, in pursuance of their duties and in accordance with their power to attain the national aim with all the means *within the limit of the Law of Nations*."

On the whole the Japanese were very law-abiding. I am very glad to assure you that the influence of Grotius will ever be increasing in Japan.

¹ S. Takahashi. *La neutralites du Japon pendant la Guerre franco-allemande*, 1901.

